IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

WP(C).No. 19881 of 2007(P)

PETITIONER:
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1. **SANOJ, S/O PAULOSE, AGED 22 YEARS, CHITTAYATHU HOUSE, NELLIMATTOM P.O., NELLIMATTOM, KOTHAMANGALAM.**

2. **SMT. ALEYAMMA PAULOSE, W/O PAULOSE, CHITTAYATHU HOUSE, NELLIMATTOM, KOTHAMANGALAM.**

BY ADV. SRI.JOHN JOSEPH(ROY)

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT OF KERALA, HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DEPUTY INSPECTOR GENERAL OF POLICE, ERNAKULAM.**

3. **THE C.I. OF POLICE, KOTHAMANGALAM.**

4. **THE S.I. OF POLICE, OONNUKAL POLICE STATION, OONNUKAL, KOTHAMANGALAM.**

BY GOVERNMENT PLEADER SRI.SALIM. P.A.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.19881/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE DECREE IN OS. 69/93 DT. 28.10.95 OF THE SUB COURT MUVATTUPUZHA.

EXT.P2:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DT. 16.9.99 IN OP.10772/99.

EXT.P3:- COPY OF THE LETTER DT. 7.9.94 OF THE I.G. OF POLICE.

EX.T.P4:- COPY OF THE LETTER DT. 30.6.05 OF THE KAVALANGADU GRAMA PANCHAYATH PRESIDENT.

EXT.P5:- COPY OF THE LETTER DT. 5.7.05 OF THE KAVALANGADU GRAMA PANCHAYAT PRESIDENT.

EXT.P6:- COPY OF THE MEMO OF ARREST OF THE IST PETITIONER ON 31.5.07 TO THE FATHER.

EXT.P7:- COPY OF THE DISCHARGE CARD ISSUED TO THE IST PETITIONER FROM THE GOVERNMENT HOSPITAL KOTHAMANGALAM DT. 12.6.07.

EXT.P8:- COPY OF THE FIR IN CRIME 116/07 OF THE OONNUKKAL POLICE STATION AGAINST PETITIONERS.

EXT.P9:- COPY OF THE SCANE MAHASAR IN CRIME NO.116/07 OPF THE OONNUKKAL POLICE STATION.

EXT.P10:- COPY OF THE CERTIFICATE DT. 24.6.98 OF KAVALANGADU GRAMA PANCHAYAT.

EXT.P11:- COPY OF THE REQUEST REMAND IN CRIME NO.116/07 OF OONNUKAL POLICE.

EXT.P12:- COPY OF THE CUSTODY MEMO OF THE IST PETITIONER DT. 31.5.07 BY 4TH RESPONDENT.

EXT.13:- COPY OF THE INSPECTION MEMO DT. 31.5.07 OF THE 4TH RESPONDENT.

EXT.P14:- COPY OF THE PETITION FILED BEFORE THE 2ND RESPONDENT BY THE PETITIONERS DT. 12.6.07.

W.P.(C) NO.1981/2007

EXT.P15:- COPY OF THE COMPLAINT DT. 27.607.

EXT.P16:- COPY OF THE LETTER DT. 20.7.07 OF THE DIRECTOR GENERAL OF POLICE (PRISON)

ANNEXURE R3(a):- COPY OF THE REQUEST DT. 31.5.07.

ANNEXURE R3(b):- COPY OF THE WOUND CERTIFICATE.

ANNEXURE R3(c):- COPY OF THE ARREST MEMO.

ANNEXURE R3(d):- COPY OF THE FIR.

ANNEXURE R3(e):- COPY OF THE MEDICAL REPORT.

ANNEXURE R3(f):- COPY OF THE REMAND REPORT.

/TRUE COPY/

P.S. TO JUDGE

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.19881 of 2007-P

Judgment

Balakrishnan Nair, J.

The petitioners have approached this Court, seeking the following reliefs:

> *"(i) call for a report in detail regarding the action taken against the HC Nos.(G) 6675, H.C.7352, PC 7074, PC 7767 and PC 8431 of Oonnukal Police Station on the basis of Exhibit P14 and also against the Panchayat President Smt.Riby Binoy and Sri.Mohan Ambattu.*
>
> *(ii) Issue a writ of mandamus directing the 2nd respondent to conduct an effective and detailed enquiry against the culprits in the light of Exhibit P14 and register case against them and ensure that they are prosecuted properly.*
>
> *(iii) Issue a writ of mandamus to the 2nd respondent or any higher Police Officer than the 3rd respondent to enquire into the acts and deeds occurred on 31.05.2007 and file a proper charge than the present charge prepared by the 4th respondent, for the ends of justice.*

(iv) Issue a writ to the 1st respondent to file a report whether the Panchayat President has any authority or right to destroy or remove any obstruction or encroachment at his own instance."

The petitioners' residential house is by the side of a public road. There is a culvert in that road for the draining of rain/waste water. The said culvert on the other side of the road was blocked by certain persons. Therefore, the petitioners moved the competent authorities for removal of the said block. On finding that the complaint of the petitioners was genuine, the Panchayat moved the RDO for taking appropriate proceedings against the persons who blocked the drain. The Panchayat also simultaneously permitted the petitioners to take steps to protect their well from which they draw drinking water. Because of the present state of affairs, the rain/waste water was flowing into their well. So, to prevent the same, they constructed a concrete slab. Later, on the motion of the Panchayat, certain persons came to remove the said slab. There were two Police Constables also to protect them. The petitioners pointed out that the

slab is constructed in the property owned by them and therefore, no one has any right to remove that. The first petitioner physically prevented the persons brought for removing the slab. There was some altercation. The Police arrested the first petitioner. The said incident took place at about 12.45 pm. In the evening, he was produced before the Magistrate, Muvattupuzha and remanded to judicial custody at about 7 pm. He was taken in a car to the sub-jail and was severely manhandled. He was admitted in the sub-jail only by 12 midnight. So, for about 5 hours, he was retained by the Police and brutally manhandled. The next day, he was released on bail. Thereafter, he filed Ext.P14 complaint against the Police, before the competent authorities. But, no action was taken. The Police has filed the final report in the crime registered against him. In the said crime, his parents are also arrayed as the accused. The same would show that the case against him is a false case. The charges against the first petitioner include manhandling the Police Constables, who were on official duty. Ext.R3(b) series wound certificates would show that according to the Police Constables, they were manhandled by four persons. In

the final report, there are only three accused, the petitioner and his parents. So the case of the Police foisted against him is patently false and untenable, it is submitted. In the above factual background, this Writ Petition is filed, seeking the above quoted reliefs.

2. The 2nd respondent has filed a counter affidavit and the 3rd respondent has filed a statement, denying all the allegations of the petitioners. It is submitted by the 2nd respondent that Ext.P14 has been forwarded to him by the Deputy Superintendent of Police and an enquiry is being conducted into the same.

3. Having regard to the facts of the case, we feel that if the first petitioner is manhandled and no effective action is being taken, he has got various remedies under the different statutes. He can file a complaint before the District Police Complaint Authority against the Police Constables concerned. He can move the Criminal Court by filing a private complaint and prosecute them. He can also move the civil court for damages. Having regard to the disputed nature of the facts, we feel that it is not appropriate for this Court to issue any direction in this matter to the Authorities. If the petitioners are dissatisfied with the enquiry conducted by the District Police

Complaint Authority, needless to say, they can approach this Court again, seeking appropriate reliefs. Subject to the above observations, the Writ Petition is closed.

K.BALAKRISHNAN NAIR,JUDGE

25.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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